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BEFORE THE ARIZONA CORPORATION C

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

AUG 20 2009

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY

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IN THE MATTER OF:

DOCKET NO. S-20571A-07-0711

RICK McCULLOUGH, a single man
individually and doing business as
McCULLOUGH INSURED INVESTMENTS,

DECISION NO. 71248

THE KODIAK INVESTMENT GROUP, L.L.C.,
an Arizona limited liability company,

ANITA GENEVA McCULLOUGH,
a/k/a Anita G. Maestas, a single woman

Respondents.

OPINION AND ORDERDATES OF PRE-HEARING
CONFERENCES:

February 14 and March 13, 2008

DATE OF HEARING:

June 10, 2008

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern

APPEARANCES:

Anita McCullough, *In Propria Persona*; and

Ms. Rachel Strachan, Staff Attorney, Securities
Division, on behalf of the Arizona Corporation
Commission.

BY THE COMMISSION:

On December 31, 2007, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Rick McCullough d/b/a McCullough Insured Investments ("MI"), The Kodiak Investment Group, L.L.C. ("Kodiak"), and Anita Geneva McCullough a/k/a Anita G. Maestas (collectively "Respondents") in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of promissory notes.

1 The Respondents were duly served with copies of the Notice.

2 On January 18, 2008, a request for hearing was filed by Anita G. McCullough.

3 On January 28, 2008, by Procedural Order, a pre-hearing conference was scheduled on
4 February 14, 2008.

5 On February 8, 2008, a request for hearing and an Answer was filed by Rick McCullough.

6 On February 12, 2008, by Procedural Order, it was ordered that the pre-hearing conference
7 should be held as previously scheduled.

8 On February 14, 2008, the pre-hearing conference was held as scheduled. The Division
9 appeared with counsel and Ms. McCullough appeared on her own behalf. It was unclear whether Mr.
10 McCullough had received his copy of the Commission's Procedural Order which scheduled the pre-
11 hearing conference. During the pre-hearing conference, Ms. McCullough requested more time to file
12 her Answer.

13 On February 15, 2008, by Procedural Order, a pre-hearing conference was scheduled on
14 March 13, 2008.

15 On March 13, 2008, the Division appeared with counsel and the McCullough Respondents
16 each appeared on their own behalf. After a brief discussion, the Division requested that a hearing be
17 scheduled.

18 On March 14, 2008, by Procedural Order, a hearing was scheduled to commence on
19 June 10, 2008.

20 On June 10, 2008, a full public hearing was commenced before a duly authorized
21 Administrative Law Judge of the Commission at its office in Phoenix, Arizona. The Division
22 appeared with counsel. Ms. McCullough appeared on her own behalf. Following the conclusion of
23 the hearing, the matter was taken under advisement pending submission of a recommended Opinion
24 and Order to the Commission.

25 * * * * *

26
27 Having considered the entire record herein and being fully advised in the premises, the
28 Commission finds, concludes, and orders that:

FINDINGS OF FACT

1
2 1. Rick McCullough is an individual whose last know address is 4018 East Melinda
3 Lane, Phoenix, Arizona 85054. At all relevant times herein, Mr. McCullough did business as MII.

4 2. Kodiak is an Arizona limited liability company whose principal place of business is in
5 Phoenix, Arizona. Mr. McCullough was the manager and sole member of Kodiak.

6 3. Anita Geneva McCullough is a single woman and the former spouse of Respondent
7 Rick McCullough and her last known address is 5450 East Deer Valley Road, Unit No. 3015,
8 Phoenix, Arizona 85054.

9 4. Ms. McCullough was named in this proceeding individually and pursuant to A.R.S. §
10 44-2031(C) for the purpose of determining the liability of the marital community.

11 5. Although Respondent Rick McCullough had requested a hearing, he neither appeared
12 nor presented any evidence at the scheduled hearing on this proceeding.

13 6. In support of the allegations raised in the Notice with respect to Respondent Rick
14 McCullough's and Kodiak's alleged violations of the Securities Act and whether the Respondents'
15 marital community should be liable pursuant to A.R.S. § 44-2031(C), the Division called three
16 witnesses as follows: Mr. Robert Eckert, a special investigator for the Division; Ms. Pam Riley, a
17 forensic accountant with the Division; and Mrs. Trudy Daley, an investor.

18 7. Ms. McCullough testified on her own behalf.

19 8. Based on the Commission's records, Mr. McCullough was not registered as a
20 securities salesman or dealer in Arizona, and neither Kodiak nor MII had registered securities with
21 the Commission for sale to investors.

22 9. Based on the Division's investigation, Mr. McCullough began his mortgage
23 investment activities with a corporation known as McCullough Mortgage and Financial, Inc., which
24 he incorporated in Arizona on December 17, 1998, with himself as its president. Subsequently,
25 according to Commission records, Mr. McCullough changed its name to Cactus Cash, Inc. ("CCI")
26 on August 8, 2001.¹ (Ex. S-12)

27 ¹ The Commission's Corporations Division records revealed that Mr. McCullough also incorporated CCI on December
28 17, 1998, and had also been its president. Both corporations were administratively dissolved by the Commission on
October 31, 2007, due to the failure of the corporation(s) to file their Annual Report(s) when due.

1 10. The Division's investigation was unable to find anything with respect to any corporate
2 registration of MII, but did find that Mr. McCullough had reserved the name for Kodiak and filed
3 Articles of Organization on September 8, 2006, as the company's manager with the Commission's
4 Corporations Division. However, Mr. McCullough did not complete Kodiak's organization as a
5 limited liability company because he failed to publish its Articles of Organization as required by law.
6 (Tr. at p. 41) (Ex. S-12)

7 11. According to Mr. Eckert, Mr. McCullough's offerings consisted of two different
8 investments which Mr. McCullough began selling in mid-2005 when he was doing business as MII
9 and seeking individuals to lend him cash which purportedly would be invested in home building
10 projects.

11 12. According to the Division, Mr. McCullough approached prior mortgage customers for
12 whom he had previously secured mortgages and assisted them in taking out second mortgages on
13 their homes and lending him the balance of the funds resulting from the second mortgages. In return,
14 Mr. McCullough promised his investors a significant monthly return on their investments which
15 would enable the investor to both pay the second mortgage and leave excess money for other
16 purposes. The terms of the promissory notes for the loans called for repayment of the principal
17 amount in five to six years.

18 13. Based on Mr. Eckert's investigation of Mr. McCullough's investment sales activities,
19 they involved securities in the form of notes for loans made to Mr. McCullough. Mr. Eckert found
20 that there were two women and one married couple who invested with Mr. McCullough dba MII and
21 Kodiak as follows: Ms. Bernice Apodaca; Ms. Dorothy Resler; and Mr. and Mrs. Philip Daley.
22 (Tr. at p. 15)

23 14. According to the Division's investigator, prior to making investments with Mr.
24 McCullough, two of the three investors, Ms. Resler and the Daleys, had existing relationships with
25 Mr. McCullough as he had helped them with mortgages previously. However, in Ms. Apodaca's
26 case, she had telephoned him accidentally when she had attempted to contact "Twelve on Your Side"
27 to make a complaint about another matter.

28 15. The Division's investigation revealed that the Daleys and the other investors had

1 refinanced their homes with second mortgages, taking out substantial sums of equity in the form of
2 cash in order to make loans to Mr. McCullough.

3 16. Mr. Eckert identified a copy of a promissory note dated October 14, 2005, wherein
4 Ms. Apodaca lent Mr. McCullough \$35,000. According to the terms of the note, he promised he
5 would pay her \$500 a month until the note was due on November 31, 2011. Purportedly the loan
6 funds were to be used "to secure real-estate investment property loan." (Ex. S-1)

7 17. Mr. Eckert further identified a domestic wire transfer form which Mr. McCullough
8 dba MII used to wire \$2,139.89 to Ms. Apodaca's bank account on October 31, 2005. (Ex. S-1)

9 18. Mr. Eckert also identified a note dated September 8, 2006, whereby Ms. Apodaca in a
10 subsequent transaction loaned \$48,000 to Mr. McCullough and Kodiak. The terms of the note stated
11 that Ms. Apodaca would be paid \$850 in monthly payments, and this note was due on August
12 31, 2011. (Ex. S-1)

13 19. A Kodiak document entitled "deposit authorization" which was signed by Ms.
14 Apodaca on September 8, 2006, identified Mr. McCullough as Kodiak's "managing partner" who
15 would be responsible for all wire transfers to her bank account. The funds which had been loaned to
16 Mr. McCullough were identified as having come from the refinancing of her home in order to receive
17 monthly payments which would allow a "greater monthly cash flow." (Ex. S-1)

18 20. Mr. Eckert identified a title company check payable to Ms. Apodaca in the amount of
19 \$37,139.89, which had been endorsed over by Ms. Apodaca "to MII" on October 21, 2005, and
20 further initialed "RTM" by Mr. McCullough. (Tr. at p.31)

21 21. Ms. Apodaca's mortgage loan documents from her first transaction with Mr.
22 McCullough also reflected a five percent loan origination fee of \$8,100 which was paid to Mr.
23 McCullough's mortgage company, CCI, together with an appraisal fee of \$300 for a total of \$8,400
24 paid to CCI. (Tr. at p. 32)

25 22. In his testimony about Ms. Apodaca's second mortgage transaction with Mr.
26 McCullough, Mr. Eckert identified a settlement statement dated August 2, 2006, involving a
27 transaction whereby the borrower, Ms. Apodaca, was to receive \$30,287. Upon reviewing Ms.
28 Apodaca's loan documents related to the August 2, 2006, refinancing transaction, Mr. Eckert

1 identified a first mortgage for \$173,600 and an existing mortgage for \$43,400, totaling \$217,000 in
2 mortgages on her property as a result of refinancing with Mr. McCullough and CCI. In this
3 transaction, Mr. McCullough, through CCI, received a loan origination fee of \$1,736, a brokerage fee
4 of \$5,208, and a processing fee of \$995, for a total of \$7,939. (Ex. S-10)

5 23. Mr. Eckert also testified regarding an MII investment package for Ms. Dorothy Resler.
6 The package was similar to that of Ms. Apodaca and the Daleys and included a promissory note with
7 a face value of \$45,000, and provided for Mr. McCullough to make monthly payments of \$625 to Ms.
8 Resler, with a due date of November 31, 2011. According to the terms of the note, her investment
9 funds were also to be used to make real-estate property loans. The date of the initial loan agreement
10 with Mr. McCullough was October 14, 2005. (Ex. S-2)

11 24. Settlement documents for Ms. Resler's initial mortgage transaction reveal that she
12 mortgaged her property with a new loan for \$166,250 and on October 21, 2005, received a check
13 back for \$49,766.85. (Ex. S-21)

14 25. A copy of the cancelled check from Premier Title Group to Ms. Resler in the amount
15 of \$49,766.85 reflects her endorsement on its reverse side, and a further endorsement to MII along
16 with Mr. McCullough's initials also dated October 21, 2005. In return, Mr. McCullough wire
17 transferred \$4,766.85 to Ms. Resler's account with the remaining balance of \$45,000 loaned to MII
18 and Mr. McCullough.

19 26. Ms. Resler's documents also reveal that Mr. McCullough's company, CCI, received a
20 five percent loan origination fee of \$8,312.50 and \$300 for the appraisal fee, for a total of \$8,612.50.
21 (Ex. S-21)

22 27. Mr. Eckert identified a second set of mortgage documents for Ms. Resler which
23 involved a second loan in the amount of \$58,750 signed September 8, 2006. It was termed a
24 "personal note" on Kodiak letterhead and provided for an \$850 monthly payment to Ms. Resler with
25 the note coming due on July 31, 2012. A deposit authorization on Kodiak letterhead signed by Ms.
26 Resler on September 8, 2006, indicates that her investment funds were obtained by refinancing her
27 property. (Ex. S-2)

28 28. The Kodiak deposit authorization for Ms. Resler also states that Mr. McCullough

1 would be the managing partner on her account and would be responsible for the payments which
2 were to be made to her.

3 29. The record further established that when Ms. Resler invested on the second occasion
4 with Mr. McCullough, the mortgage on her home increased to \$205,000, and she took \$21,425.52 in
5 cash out. A check payable to Ms. Resler from the Camelback Title Agency contains the signature of
6 Mr. McCullough "c/o Dorothy Resler" and appears to have her signature below. (Ex. S-2)

7 30. As part of this transaction, a loan origination fee was paid to Mr. McCullough's
8 company, CCI, in the in the amount of \$8,200 plus a brokerage fee of \$800, for a total of \$9,000.

9 31. Mrs. Trudy Daley testified that the Daleys had first dealt with Mr. McCullough some
10 time after 1998 when they purchased their first home in Arizona. In approximately 2002, they
11 subsequently refinanced this home with him at a lower rate of interest.

12 32. In 2004 they sold that home and moved to their present home in Desert Hills. They
13 were assisted by Mr. McCullough in obtaining lower financing for this home and obtained a
14 \$325,000 loan from National City Bank of Indiana because they also added a swimming pool to the
15 property.

16 33. Mrs. Daley testified that in December 2005, Mr. McCullough approached the Daleys
17 with a "fantastic proposition where we could go ahead and make an investment, and the only way we
18 could go ahead and invest in that was to go ahead and take a second." (Tr. at p. 100)

19 34. In order to invest with Mr. McCullough, the Daleys took out a second mortgage on
20 their Desert Hills home in the amount of \$273,500 by executing a deed of trust with First Horizon
21 Home Loan Corporation on December 22, 2005. Mr. and Mrs. Daley received \$3,500 and invested
22 \$270,000 in the form of a "loan" to Mr. McCullough on December 31, 2005, using funds from the
23 second mortgage which Mr. McCullough had arranged. Mr. McCullough's mortgage company, CCI,
24 also received fees from this transaction.

25 35. To facilitate this transaction, Mr. McCullough executed a promissory note to the
26 Daleys for \$270,000 on December 31, 2005. According to the terms of the Daleys' note with Mr.
27 McCullough, the monies were to be used "to secure real-estate investment property loans." (Ex. S-4)

28 36. In return for the Daleys' \$270,000 investment, Mr. McCullough was to pay them

1 \$3,150 a month of which \$2,049 was to be used to pay their second mortgage and \$1,101 was to be
2 used for improvements on their home.

3 37. Mrs. Daley described how their investment with Mr. McCullough was to work stating,
4 "He, through his corporation, put money into this new housing development, and then they would flip
5 the homes and sell them." (Tr. at p. 103)

6 38. Mr. McCullough represented to the Daleys that he was doing business as MII.

7 39. In MII promotional materials provided to Mr. and Mrs. Daley, Mr. McCullough
8 represented that his "current portfolio" contained over \$10 million provided by investors promising
9 investments being made in residential construction at "today's prices" and being sold at "next year's
10 prices." (Ex. S-5)

11 40. Mr. McCullough reassured the Daleys by misrepresenting to them that he had high-
12 profile investors and would not divulge their names. He also misrepresented that he had \$10 million
13 in backing for his project. (Tr. at p. 103)

14 41. Mr. McCullough further reassured the Daleys that their investment would be safe by
15 providing them with a copy of a document purportedly insuring Mr. McCullough's business entity,
16 MII, with \$10 million worth of insurance.

17 42. On one occasion, Mr. McCullough gave the Daleys a check from Farmer's Insurance
18 Group in the amount of \$2,703 payable to Mrs. Anita G. McCullough and endorsed over to the
19 Daleys as a partial monthly payment due on their investment.²

20 43. Mrs. Daley related that during 2006, Mr. McCullough paid the Daleys their monthly
21 payments, but not always on a regular basis. In 2007, the Daleys received six payments; however,
22 they were for less than the full amounts which were due. (Tr. at p. 112)

23 44. When the Daleys were finally able to contact Mr. McCullough about being short
24 changed, he blamed his wife, Anita McCullough, for taking off with the money and represented to the
25 Daleys that his wife "had basically flipped out." (Tr. at p. 113)

26 45. Mrs. Daley referred to a number of emails between herself and Mr. McCullough
27

28 ² Subsequently, when Ms. McCullough testified on her own behalf in the proceeding, she stated that her signature on the
check had been forged and was not hers. (Tr. at p. 146)

1 during May 2007. She was trying to contact him because his monthly payments were desperately
2 needed because the Daleys had exhausted their savings trying to keep up with the payments on the
3 second mortgage, the balance of which had been invested with Mr. McCullough. (Ex. S-14) (Tr. at p.
4 114)

5 46. According to Mrs. Daley, Mr. McCullough told her that he could not repay their loan
6 because the housing market had soured and he could not make the scheduled payments. At one point,
7 the Daleys received a letter on CCI letterhead purportedly signed by Anita McCullough. According
8 to the letter, the delays in payment were explained as being caused by the death of Mr. McCullough's
9 father in Minnesota.³ (Tr. at p. 117) (Ex. S-26)

10 47. At various times, Mr. McCullough represented to Mrs. Daley that his business entity,
11 MII, had been sold to "Nova Scotia Investment Group" and several months later she was told it was
12 sold to Kodiak. He advised her that he retained his position and would continue to make payments.
13 (Tr. at p. 118)

14 48. A Division forensic accountant, Ms. Pam Riley, testified concerning various financial
15 records which she examined with respect to Mr. McCullough and his investment offering for the
16 period from October 2005 through May 2007.

17 49. During Ms. Riley's review, she prepared a summary of receipts and disbursements of
18 MII for the period of October 18, 2005 through May 31, 2007. (Ex. S-17)

19 50. Based on a review of subpoenaed documents, Ms. Riley determined the source of
20 investor funds and how they were utilized by Mr. McCullough during the course of his purported
21 investment offering.

22 51. Ms. Riley found that Mr. McCullough received a total of \$426,792, of which \$411,792
23 came from the investors (the Daleys, Ms. Apodaca and Ms. Resler) and \$15,000 from Ms.
24 McCullough's mother, Cathy Maestas. (Ex. S-17)

25 52. From Ms. Riley's analysis, she determined that of the monies received by Mr.
26 McCullough, the identical amount was expended as follows: \$54,317 was repaid to investors;

27

28 ³ Later in the proceeding, Ms. McCullough testified that she had never written the letter and that she had spoken with her former father-in-law two days before the hearing.

1 \$300,023 was expended on Mr. and Ms. McCullough; \$42,860 was spent on jewelry; \$5,300 was
2 transferred to what Ms. Riley termed "related entities;" approximately \$23,400 was spent on other
3 disbursements; and \$910 was for unknown expenses. (Ex. S-17)

4 53. In preparing her analysis, Ms. Riley reviewed eight bank accounts, but primarily relied
5 on two checking accounts because all of the investor funds were deposited into those two accounts,
6 one at the First National Bank of Arizona in the name of MII and the other at First Arizona Savings
7 Bank in the name of Kodiak. (Tr. at p. 130) Mr. McCullough was the sole individual authorized to
8 sign checks on both accounts.

9 54. According to Ms. Riley, she found that only three investments were invested with Mr.
10 McCullough in his purported offering as follows: Dorothy Resler who invested \$71,192; Bernice
11 Apodaca who invested \$67,427; and Mr. and Mrs. Daley who invested \$270,000. (Tr. at p. 132)

12 55. Although Mr. McCullough repaid investors approximately \$54,000 from the two bank
13 accounts analyzed by Ms. Riley, he also paid investors approximately \$14,000 from his personal
14 checking account. (Tr. at p. 133)

15 56. Further analysis of the McCulloughs' bank accounts by Ms. Riley revealed that of the
16 \$300,023 received by Mr. and Ms. McCullough, approximately \$260,000 were direct transfers to
17 their personal bank account and about \$40,000 in withdrawals were made both by Mr. and Ms.
18 McCullough. (Tr. at p. 133)

19 57. Ms. Riley further explained that her bank account analysis of the MII and Kodiak
20 accounts did not include certain other transactions that were reflected in the Division's Exhibit S-18A
21 (the letter from Diamond Source USA). This letter showed that approximately another \$40,000
22 worth of jewelry was purchased with funds from another account. (Tr. at p. 135)

23 58. Additionally, during Ms. Riley's analysis of the McCullough's financial transactions,
24 she determined that of the approximately \$23,400 in "other disbursements" described in her summary
25 analysis (Ex. S-17), that \$6,236 of investor funds was spent for mortgage payments on the marital
26 residence in the name of Anita McCullough. (Tr. at p. 137)

27 59. Ms. Riley found no evidence that any of the funds which were collected from
28 investors were expended for real estate investment loans as represented to investors by Mr.

1 McCullough. (Tr. at p. 137)

2 **The Investors**

3 60. Mr. Eckert testified that he met with each of the investors involved with Mr.
4 McCullough and that they had all related how they had refinanced their home loans in order to obtain
5 funds to make investments with him. In all instances, their loan amounts "increased dramatically."
6 (Tr. at p. 62)

7 61. Mr. Eckert testified that Ms. Apodaca is approximately 80 years old and Ms. Resler is
8 approximately 89 years old, and that both women are retired and living on fixed incomes.

9 62. With respect to Mr. and Mrs. Daley, Mr. Eckert indicated that he believed Mr. Daley
10 is approximately 65 years of age and his wife is approximately 59, and that Mr. Daley had to return to
11 work after the Daleys' investment experience with Mr. McCullough.

12 63. According to Mr. Eckert, a conservator has been appointed for Ms. Resler through the
13 Public Fiduciary's Office. She relies solely on Social Security for her income.

14 64. With respect to Ms. Apodaca, Mr. Eckert testified that she relies on Social Security
15 income and some form of retirement income from Motorola where she was employed for
16 approximately 33 years.

17 65. Mr. Eckert further related that Ms. Apodaca, in speaking about Mr. McCullough,
18 "referred to him as grandson." (Tr. at p.65) Mr. Eckert testified further that, as a result of Ms.
19 Resler's and Ms. Apodaca's dealings with Mr. McCullough, Ms. Resler more than doubled her
20 mortgage payments and may lose her home and that Ms. Apodaca is struggling to make mortgage
21 payments. (Tr. at p. 66 and 67)

22 66. Mr. Eckert further described how Ms. Apodaca is also experiencing difficulties with
23 paying for her prescription medications due to her increased mortgage payments and she has to rely
24 on credit cards for payments of basic monthly expenses such as food, gas and clothing.

25 67. Mrs. Daley described in detail the financial hardships which she and her husband have
26 experienced as a result of Mr. McCullough's failure to repay the monies loaned to him and
27 purportedly invested in the Phoenix housing market.

28 68. Subsequently, in March 2008, the Daleys were able to refinance their second mortgage

1 with First Horizon at a lower interest rate which they have been able to pay with great difficulty.
2 Mrs. Daley further stated that if they had known that their investment funds were going to be used to
3 pay Mr. McCullough's mortgage, buy expensive jewelry, and to repay other investors, the Daleys
4 would not have invested with him.

5 **Community Property**

6 69. Based on the record, Mr. and Ms. McCullough were married on December 7, 2001.
7 Mr. McCullough filed for a legal separation on June 16, 2006, and a decree of dissolution of marriage
8 was subsequently entered by the Superior Court of Arizona on December 19, 2006.

9 70. According to the Division's investigation, when the petition for legal separation was
10 filed, the McCulloughs were residing in a home in Ms. McCullough's name valued at approximately
11 \$850,000 at 3925 East Patrick Lane, Phoenix, Arizona, and Ms. McCullough owned jewelry worth
12 approximately \$150,000.

13 71. While testifying, Mr. Eckert identified a copy of an MII check payable to Diamond
14 Source USA for \$42,860 signed by Mr. McCullough on November 17, 2005, with the notation
15 "investment for life" for a woman's four karat diamond ring. Additionally, a check from the joint
16 bank account of Mr. and Ms. McCullough was written by Mr. McCullough on February 4, 2006, to
17 Diamond Source USA for \$3,415.96 for diamond earrings for his wife. (Ex. S-18)

18 72. Based on the Division's investigation, according to a letter from Diamond Source
19 USA, it was established that between November 4, 2005, and February 10, 2006, Mr. McCullough
20 spent approximately \$84,000 for jewelry purchased from Diamond Source USA for Ms. McCullough.
21 The documentary evidence subsequently established that Ms. McCullough resold \$38,800 worth of
22 the jewelry back to the store by November 1, 2006. (Ex. S-18A)

23 73. According to Mr. Eckert, although investor funds were to be used in new home
24 construction or real estate property loans, Mr. McCullough failed to disclose to investors that the
25 money was being used for the McCulloughs' own residence on Patrick Lane in Phoenix. (Tr. at p. 85)

26 74. The Division's investigation further revealed that Mr. McCullough was the major
27 breadwinner of the family and that Ms. McCullough was not employed.

28 75. Ms. McCullough testified on her own behalf and pointed out that the Farmer's

1 Insurance Group check which had been given to the Daleys by Mr. McCullough did not contain her
2 endorsement on the back, and further stated that her signature had been forged. (Tr. at p. 146)
3 (Ex. S-24)

4 76. Ms. McCullough testified further that Mr. McCullough's father was not dead and had
5 not died as stated in the CCI letter purportedly signed by her and sent to the Daleys. (Tr. at p. 147)
6 (Ex. S-26)

7 77. Ms. McCullough testified that she had no idea that funds deposited into their personal
8 account and funds spent on jewelry came from investors. (Tr. at p. 147)

9 78. Ms. McCullough believed that Mr. McCullough was engaged in the mortgage loan
10 business and that he was earning his funds legitimately stating that, "I never questioned his business
11 dealings." (Tr. at p. 147)

12 79. Ms. McCullough further testified that Mr. McCullough was the "sole provider" and
13 that after they legally separated on June 16, 2006, he did not pay any support or make any mortgage
14 payments. As a result, she sold the jewelry that she still had to support herself and her daughters. At
15 the time the McCulloughs separated, the monthly mortgage payment was \$6,000 and her car payment
16 was \$750 a month.

17 80. The mortgage payments which were made by Mr. McCullough were made on the
18 marital residence at 3925 East Patrick Lane in Phoenix. The home was in Ms. McCullough's name
19 alone because, at the time they purchased it, she had a better credit rating than her husband. Their
20 home was subsequently lost in a foreclosure proceeding.

21 **Analysis**

22 81. Based on the record, there is ample evidence that Mr. McCullough through his
23 business entities committed multiple violations of the Act in the offer and sale of securities as an
24 unregistered salesman or dealer and committed fraud in connection with the offer and sale of
25 securities to the above-described investors. Additionally, there is ample evidence in the record that
26 the marital community benefited from Mr. McCullough's activities in the offer and sale of
27 unregistered securities.

28 82. Mr. McCullough presented no evidence to rebut the evidence presented by the

1 Division.

2 83. The record further established that there was commingling of funds between Mr.
3 McCullough's personal and joint accounts with his wife, leading us to conclude that the marital
4 community should be held liable for restitution and an administrative penalty pursuant to A.R.S. §
5 44-2031(C). Ms. McCullough did not deny nor did she rebut with "clear and convincing evidence"
6 that the marital community benefited from Mr. McCullough's violations of the Act.

7
8 **CONCLUSIONS OF LAW**

9 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
10 Arizona Constitution and A.R.S. § 44-1801, *et seq.*

11 2. The investments in the form of notes offered and sold by Respondent Rick
12 McCullough dba MII and Kodiak were securities within the meaning of A.R.S. § 44-1801.

13 3. The securities were neither registered nor exempt from registration, in violation of
14 A.R.S. § 44-1841.

15 4. Respondent Rick McCullough, MII and Kodiak acted as a dealer and/or salesman
16 within the meaning of A.R.S. § 44-1801(9) and (22).

17 5. The actions and conduct of Respondents Rick McCullough, MII and Kodiak constitute
18 the sale of securities within the meaning of A.R.S. § 44-1801(21).

19 6. Respondents Rick McCullough, MII and Kodiak sold unregistered securities within or
20 from Arizona in violation of A.R.S. § 44-1841.

21 7. Respondents Rick McCullough, MII and Kodiak offered and sold securities within or
22 from Arizona without being registered as a dealer and/or salesman in violation of A.R.S. § 44-1842.

23 8. Respondents Rick McCullough, MII and Kodiak committed fraud in the sale of
24 unregistered securities, engaging in transactions, practices or a course of business which involved
25 untrue statements and omissions of material facts in violation of A.R.S. § 44-1991.

26 9. The marital community of Respondents Rick McCullough and Anita McCullough
27 should be included in any Order of restitution and penalties ordered hereinafter.

28 10. Respondents Rick McCullough, MII and Kodiak have violated the Act and should

1 cease and desist pursuant to A.R.S. § 44-2032 from any future violations of A.R.S. §§ 44-1841, 44-
2 1842 and 44-1991 and all other provisions of the Act.

3 11. The actions and conduct of Respondents Rick McCullough, MII and Kodiak constitute
4 multiple violations of the Act and are grounds for an Order of Restitution pursuant to A.R.S. §
5 44-2032 and for an Order addressing administrative penalties pursuant to A.R.S. § 44-2036.

6 **ORDER**

7 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission
8 under A.R.S. § 44-2032, Respondents Rick McCullough and Kodiak Investment Group, L.L.C shall
9 cease and desist from their actions described hereinabove in violation of A.R.S. §§ 44-1841, 44-
10 1842, and 44-1991.

11 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
12 A.R.S. § 44-2032, Respondents Rick McCullough, and Anita G. McCullough, to the extent allowable
13 pursuant to A.R.S. § 25-215, jointly and severally, and Kodiak Investment Group, L.L.C. shall make
14 restitution in an amount not to exceed \$357,475 which restitution shall be made pursuant to A.A.C.
15 R14-4-308, subject to legal set-offs by the Respondents and confirmed by the Director of Securities,
16 said restitution to be made within 60 days of the effective date of this Decision.

17 IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the
18 rate of 10 percent per year for the period from the dates of investment to the date of payment of
19 restitution by Respondents.

20 IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be
21 deposited into an interest-bearing account(s), if appropriate, until distributions are made.

22 IT IS FURTHER ORDERED that the Commission shall disperse the funds on a *pro-rata*
23 basis to investors shown on the records of the Commission. Any restitution funds that the
24 Commission cannot disperse because an investor refuses to accept such payment, or any restitution
25 funds that cannot be dispersed to an investor because the investor is deceased and the Commission
26 cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at
27 the time of the distribution, shall be dispersed on a *pro-rata* basis to the remaining investors shown
28

1 on the records of the Commission. Any funds that the Commission determines it is unable to or
2 cannot feasibly disperse shall be transferred to the general fund of the State of Arizona.

3 IT IS FURTHER ORDERED that pursuant to authority granted to the Commission under
4 A.R.S. § 44-2036, Respondents Rick McCullough and Anita G. McCullough to the extent allowable
5 pursuant to A.R.S. § 25-215, jointly and severally, and Kodiak Investment Group, L.L.C. shall pay as
6 and for administrative penalties: for the violation of A.R.S. § 44-1841, the sum of \$5,000; for the
7 violation of A.R.S. § 44-1842, the sum of \$5,000; and for the violation of A.R.S. § 44-1991, the sum
8 of \$15,000, for a total of \$25,000. The payment obligations for these administrative penalties shall
9 be subordinate to any restitution obligations ordered herein and shall become immediately due and
10 payable only after restitution payments have been paid in full or upon Respondents' default with
11 respect to Respondents' restitution obligations.

12 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
13 A.R.S. § 44-2036, that Respondents Rick McCullough and Anita G. McCullough, to the extent
14 allowable pursuant to A.R.S. § 25-215, jointly and severally, and Kodiak Investment Group, L.L.C.
15 shall pay the administrative penalty ordered hereinabove in the amount of \$25,000 payable by either
16 cashier's check or money order payable to "the State of Arizona" and presented to the Arizona
17 Corporation Commission for deposit in the general fund for the State of Arizona.

18 IT IS FURTHER ORDERED that if Respondents Rick McCullough and Anita G.
19 McCullough and Kodiak Investment Group, L.L.C. fail to pay the administrative penalty ordered
20 hereinabove, any outstanding balance plus interest at the maximum level amount may be deemed in
21 default and shall be immediately due and payable, without further notice.

22 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order,
23 any outstanding balance shall be in default and shall be immediately due and payable without notice
24 or demand. The acceptance of any partial or late payment by the Commission is not a waiver of
25 default by the Commission.

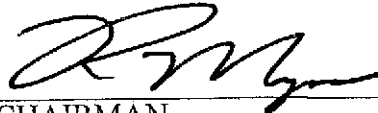
26 IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission
27 for its cost of collection and interest at the maximum legal rate.

28 ...

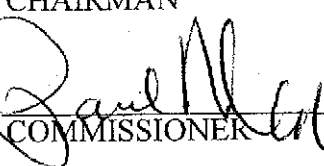
1 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order,
 2 the Commission may bring further legal proceedings against the Respondent(s), including application
 3 to the Superior Court for an Order of Contempt.

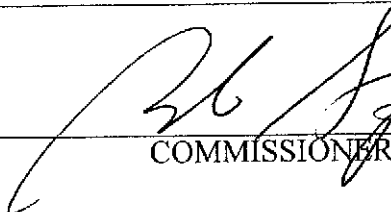
4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

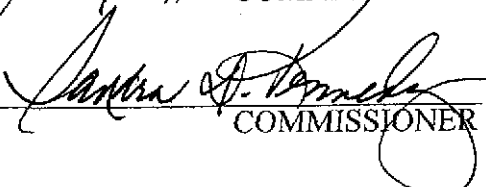
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
 7 
 8 CHAIRMAN


 COMMISSIONER

9 
 10 COMMISSIONER


 COMMISSIONER


 COMMISSIONER

11 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
 12 Executive Director of the Arizona Corporation Commission,
 13 have hereunto set my hand and caused the official seal of the
 14 Commission to be affixed at the Capitol, in the City of Phoenix,
 this 20TH day of AUGUST, 2009.

15 
 16 ERNEST G. JOHNSON
 17 EXECUTIVE DIRECTOR

18
 19 DISSENT _____

20
 21 DISSENT _____

22 MES:db

1 SERVICE LIST FOR:

RICK McCULLOUGH DBA McCULLOUGH INSURED
INVESTMENTS, THE KODIAK INVESTMENT GROUP,
L.L.C., AND ANITA GENEVA McCULLOUGH AKA
ANITA G. MAESTAS

3 DOCKET NO.:

S-20571A-07-0711

4 Rick McCullough
5 4018 East Melinda Lane
6 Phoenix, Arizona 85050

7 Anita G. McCullough
8 5450 East Deer Valley Road, Unit 3015
9 Phoenix, Arizona 85054

10 Matt Neubert, Director
11 Securities Division
12 ARIZONA CORPORATION COMMISSION
13 1300 West Washington Street
14 Phoenix, Arizona 85007
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